motive in stabbing him and the weapon used. Even if the accused had unreservedly expressed his willingness to be questioned I do not think that any question beyond "Do you know anything of the death of this European?" would have been permissible except perhaps subsequent questions put merely for the purpose of explanation. The putting of questions does not of itself render a statement inadmissible but it is obvious that if questions are put by way of cross-examination, the voluntary nature of the statement is immediately lost.

In the present case the learned magistrate should have been satisfied that the accused did not volunteer to make a statement at all and the subsequent cross-examination should therefore never have arisen.

I agree that there was sufficient evidence to convict the accused apart from the confession and that the conviction should stand.

[ORIGINAL CIVIL JURISDICTION]

LOW CHENG SOON, LOW CHENG JEWAY, and LOW CHENG MEE (by their next friend HENG HAY ANG) and HENG HAY ANG.....Plaintiffs

v.

LOW CHIN PIOW and LOW PENG SONG.....Defendants

[SINGAPORE SUIT No. 699 of 1925]

Construction of Will—annuity for life—provision for the purchase of "Hio Theng" property—Court Interpreter's translation—prepetuity—superstitious uses—gift for the benefit of donees.

The testator by his wills directed his trustees after his death "(to let) my 'Huat Chi' Tan Ger Siam draw a sum of $500 monthly from Chop Yong Ngiap for expenses, children's expenses included; my first 'Chiap' Heng Hay Ang to draw a sum of $300 monthly from Chop Yong Lee for expenses and my second 'Chiap' Poon Kha Ang to draw a sum of $100 monthly from Chop Yong Lee for expenses."

Held, that the sum of $500 payable monthly to Tan Ger Siam was an annuity payable to her for life. Principle in *Thorp* v. *Owen*, 2 Hare 607, adopted.

The testator also directed his trustees "to draw $10,000 from the common funds (of my estate) and give it to my eldest son Low Chin Piow for the purchase of a "Hio Theng" property (a property acquired for the purpose of using the income derivable from it in defraying the expenses of ancestral worship) which shall be taken possession of (absolutely) by him."

Held, that, on the true construction of this clause, the legacy of $10,000 to Low Chin Piow was a trust for ancestral worship and the gift was invalid as tending to a perpetuity and also as being for superstitious uses.

The wills further directed the trustees "to draw $50,000 from the sums standing to the credit of my shares to pay the cost of building. My six sons shall share equally the occupation thereof when completed."

Held, that the direction to apply $50,000 towards the building of a house in China could be disregarded as the residuary legatees were absolutely entitled to the sum and could claim the gift without applying it to the purpose indicated.

This was a Summons taken out on the 16th February, 1931 by the defendants who were executors of the Wills of Low Peng Hong deceased who died on the 23rd January 1922.

The deceased left two Chinese Wills, which were duly proved on the 23rd June, 1922.

The testator left surviving him three wives Tan Ger Siam, Heng Hay Ang and Poon Kha Ang, six sons and one daughter.

Tan Ger Siam died on the 12th of September, 1926.

In accordance with the directions contained in the wills the executors caused to be erected a big house in China for use as a family house by the deceased's six sons. After the foundations of the house had been laid, the executors were forbidden, owing to the appointment of a Receiver, to draw further money from the funds standing to the credit of the Estate and the building operations had to be suspended.

The questions raised by the Summons for the determination of the Court, so far as they are material, are set out in the Judgment below.

Wilson, for Defendants, Executors and Trustees.

O'Connor, for Sons as Residuary Legatees.

Vaux, for Children of Testator by his wife Tan Ger Siam, and Low Heng Kian, etc.

Campbell, for Children of the Testator by his wife Heng Hay Ang.

da Silva, for Low Chin Piow in his individual capacity.

Cur. Ad. Vult.

TERRELL, J. This is a summons which has been taken out in an administration action to determine the construction of the will of Low Peng Hong deceased. The summons which has been adjourned into Court for argument is No. 208/31 and was issued on the 16th February, 1931.

The first two questions for construction concern a monthly sum of $500 payable to the principal wife. The clause reads as follows:—

> "I direct my 'Siew Wee Thok Jen' (i.e. Trustees or Executors) after my death to let my "Huat Chi" Tan Ger Siam draw a sum of $500 monthly from Chop Yong Ngiap for expenses, children expenses included; my first "Chiap" Heng Hay Ang to draw a sum of $300 monthly from Chop Yong Lee for expenses and my second "Chiap" Poon Kha Ang to draw a sum of $100 monthly from Chop Yong Lee for expenses."

I expressed the opinion during the hearing that this was an absolute gift to the principal wife of an annuity for her life and that this annuity ceased on her death. I did not think that the words "children expenses included" could possibly make it a trust in favour of the children. I think the principle of *Thorp* v. *Owen*, 2 Hare 607 and of the other cases cited in page 871 of Jarman 7th Edition, applies. The question whether the annuity ceased on the failure of Chop Yong Ngiap was argued before me, but the question is not raised by the summons and I give no decision on this point.

The third question raised involved several matters about most of which there was no dispute provided that the funds in Court were sufficient to meet the several legacies or payments without the necessity of abatement.

A conflict arose however as to a legacy of $10,000 given to the eldest son, the first defendant. The words of the gift in the official probate are as follows:—

> "I direct my 'Siew Wee Thok Jen' (i.e. Trustees or Executors) to draw $10,000 from the common funds (of my estate) and give it to my eldest son Low Chin Piow for the purchase of a 'Hio Theng' property (a property acquired for the purpose of using the income derivable from it in defraying the expenses of ancestral worship) which shall be taken possession of (absolutely) by him."

Mr. da Silva on behalf of Low Chin Piow contended that this was an absolute gift in favour of his client and that there was no trust. He tried to support his argument by suggesting that the Court Interpreter's translation of "Hio Theng property" was not correct and tendered Giles Dictionary as evidence. He also relied on the case of *Lim Mah Yong* v. *J. A. Anthony and others*, 1 Kyshe, page 454, in which it was held that the petitioner was entitled to call evidence as to the correct translation of a will. I have no doubt that an incorrect translation may be corrected if the proper procedure is adopted, but no such evidence can be admitted on a construction summons in which the Court will only look at the translation attached to the Probate. I should also add that even a book of authority such as Giles' Dictionary is of little assistance to the Court unless explained by the viva voce evidence of a witness who is an expert in the Chinese language. The clause therefore must be interpreted as it stands.

It is clear that if the gift is an absolute trust to purchase property the income of which is to be used for ancestral worship the gift is void both as a perpetuity or as a gift for superstitious uses. It is argued that it is an absolute gift to Low Chin Piow and that the condition as to purchase of a property can be disregarded as an unenforceable precatory trust or alternatively that it is a gift subject to a condition which is void and that the absolute gift remains. I do not think that very much assistance can be gained from the authorities. On reading the clause I have very little doubt that the gift is a trust for a specific purpose and is void according to our law. The final words do not assist Low Chin Piow as it would be in the testator's mind that his eldest son would be the person who would according to Chinese custom be responsible for the necessary ceremonies.

The remaining claim about which there is a dispute is the clause relating to the building of a house in China. The clause is as follows:—

> "As I have built no big house in China, I direct that if in future a site is selected in Low Lang, Swatow, for building one, my 'Siew Wee Thok Jen' (i.e. Trustees or Executors) shall draw $50,000 from the sums standing to the credit of my shares to pay for the cost of building. My six sons shall share equally the occupation thereof when completed."

There appears to be a dispute as to the amount that has already been spent for this pur-

pose but I would not in any case go into matters of this kind on a summons for construction. The question does not however arise as I consider that this is a case where the gift is for the benefit of the donees alone, i.e. the residuary legatees, in which case they can claim the gift without applying it to the purpose indicated (see Jarman, 7th Ed. page 857). As there will be sufficient to pay the other legacies and annuities, this means in effect that this legacy will not be payable except as part of the residue.

It appears that the trust funds consist of $136,900 invested and a small sum of cash. The investments include $129,000 Singapore Municipal 5% Debenture Stock.

The various questions raised by the summons will be answered as follows:—

As to question (1) and (2), it will be declared that the sum of $500 payable monthly to Tan Ger Siam from Chop Yong Ngiap was an annuity payable to her which ceased on her death.

As to question (3), it will be declared that the legacy of $10,000 to Low Chin Piow was a trust for ancestral worship and the gift fails as tending to a perpetuity and also being for superstitious uses.

The direction to the trustees to apply $50,000 towards building a house in China can be disregarded as the residuary legatees are absolutely entitled to the sum and can expend it as they like.

The residuary legatees would prefer to retain the capital intact and the annuities to the two surviving wives will therefore be provided for by transferring to a separate account the sum of $100,000 5% Singapore Municipal Debentures, the surplus income being transferred to the general account of the suit. The sums of $5,000, $4,000 and $4,000 referred to in para 3 (a), (c) and (d) of the summons will be provided by transferring Singapore Municipal Debentures to these amounts to separate accounts, the income being in the meantime payable to the general account.

The costs of all parties of this application must be taxed as between solicitor and client and paid out of the general fund, investments being sold so far as necessary for this purpose. The Order of Court providing for the payment of $150 to the three infant defendants must be discharged but they can apply for maintenance if necessary out of the income or capital of their several shares. There will be a declaration that the testator's five sons and the adopted son are entitled to the residue equally between them. The adult beneficiaries can apply for payment of their interests in such part of the corpus as remains over after making the transfers indicated above.

Solicitors for the parties:—*1. Battenberg & Talma. 2. Drew & Napier. 3. Rodyk & Davidson. 4. John G. Campbell & Co. 5. Claude da Silva.*

[ORIGINAL CIVIL JURISDICTION]

LEE SENG HENG and OTHERS.....Plaintiffs

v.

GUARDIAN ASSURANCE COMPANY, LIMITED.....Defendants

[SINGAPORE SUIT No. 4 of 1932]

Insurance—Ordinance No. 51 (Arbitration) S. 5—cancellation of Policy—validity of notice of loss—sufficiency of verbal notice—the Post as a means of communication—authority of agent—condition precedent—waiver—estoppel.

An option to determine a fire policy in order to be valid should be communicated to the addressee. Where it was reasonably clear from the circumstances that the parties contemplated the use of the post as a means of communication and the plaintiffs subsequently ratified that method of communication adopted by the defendants, the cancellation of the contract was effected at the time the option was posted, even though it never reached its destination.

A verbal notice of claim, though in the absence of express stipulation for a written one, is valid if communicated to the Insurance Company. Where, however, notice was given verbally to the clerk of the Company who had no discretion in the matter and there was an express provision in the Policy for written notice,

Held, the verbal notice was insufficient.

Clause 11 of the Policy reads as follows:—

"On the happening of any loss or damage the Insured shall forthwith give notice thereof to the Company, and shall within 15 days after the loss or damage, or such further time as the Company may in writing allow in that behalf deliver to the Company

(a) A claim in writing for the loss and damage containing as particular an account as may be reasonably practicable of all the several articles or items of property damaged or destroyed, and of the amount of the loss or damage thereto respectively, having regard to their value at the time of the loss or damage, not including profit of any kind.

(b) Particulars of all other Insurances, if any. The Insured shall also at all times at his own expense produce, procure and give to the Company all such further particulars, plans, specifications, books, vouchers, invoices, duplicates or copies thereof, documents, proofs and information with respect to the claim and the origin and cause of the